

**STATE OF RHODE ISLAND AND PROVIDENCE PLANTATIONS  
COUNTY OF NEWPORT**

**APPROVED 6/22/09**

At a meeting of the Town Council of the Town of Tiverton, County and State aforesaid, held at the Tiverton Town Hall, 343 Highland Road, on the 8th day of June 2009 A.D. at 7:00 p.m.

President Bollin opened the meeting with the Pledge of Allegiance to the Flag.

|                   |                                     |                         |
|-------------------|-------------------------------------|-------------------------|
| <b>Roll Call:</b> | <b>Donald Bollin-President</b>      | <b>Jay Lambert</b>      |
|                   | <b>JoAnne Arruda-Vice President</b> | <b>Cecil E. Leonard</b> |
|                   | <b>Hannibal Costa</b>               | <b>Edward Roderick</b>  |
|                   | <b>Louise Durfee</b>                |                         |

Town Administrator, James C. Goncalo  
Town Solicitor, Andrew M. Teitz were also present.

**Approval of Consent Agenda:**

All items listed with (CA) are to be considered routine by the Town Council and will be enacted by one motion. There will be no separate discussion of these items unless a member of the Council or a member of the public so requests, in which event the item will be removed from Consent Agenda (CA) consideration and considered in its normal sequence on the agenda.

Council President Bollin read the items on the Consent Agenda

Councilor Durfee requested removal of item A-3b, Correspondence from Paul Hill. Councilor Leonard requested removal of items A-4, Petition by National Grid and A-5, Petition for Joint Pole. Councilor Bollin requested removal of item A-6, Correspondence from Tiverton Yacht Club.

Councilor Roderick made a motion, seconded by Councilor Arruda to approve the remaining items on the Consent Agenda. Motion passed unanimously.

The Consent Agenda was as follows.

**BUSINESS BROUGHT BEFORE THE COUNCIL**  
**CONSENT AGENDA**

**A-1-Approval of Minutes of Previous Meetings.**

- a. Approval of Minutes from May 26, 2009 Regular Council Meeting
- b. Approval of Executive Session Minutes from May 26, 2009 Council Meeting

**A-2-Receipt of Minutes from Various Board and Commissions:**

- a. Art's Council
- b. Prevention Coalition
- c. Wastewater Management (2)

**A-3-Correspondence**

- a. Received From City of Newport Regarding Consolidation of the Newport County Convention and Visitor's Bureau with the East Bay Tourism Council

**Received From Paul Hill, Chairman Villages on Mount Hope Bay Executive Committee Regarding Tax Assessments for VMHB – Copied to Tax Assessor, Town Administrator and Town Solicitor**

Councilor Durfee requested removal of this item for the Solicitor to review. In view of bond issues since it is a threat of litigation, needs referral to Solicitor.

Councilor Durfee made a motion, seconded by Councilor Roderick to refer this letter to the Solicitor for prompt attention. Motion passed unanimously.

**Petition by National Grid Electric for GRID Pole on Canonicus Street Response From DPW Director Stephen Berlucchi**

**Petition for Joint Push Brace Pole to be Attached to P.31 on Borden Road Response From DPW Director S. Berlucchi**

Councilor Leonard, noting the DPW had no objection, made a motion to approve the Petition by National Grid Electric for GRID Pole on Canonicus Street and the Petition for Joint Push Brace Pole to be attached to P31 on Borden Road, seconded by Councilor Durfee motion passed unanimously.

**Tiverton Yacht Club, Kenneth R. Tremblay, Esq. – Request Amendments to Zoning Ordinance – Referred to Planning Board**

David Campbell, an abutter, objected to the request. The application has numerous defects, same situation in 2007, wrote a letter to the Council so referral would not be automatic. Spoke to Peter Ruggiero, Planning and Zoning Attorney; application should be clean, conforming to go to the Town Council then Planning Board, Very obvious deficiencies. Solicitor Teitz received a fax from Mr. Campbell late in the afternoon, understands his concerns; Statue says Town Council shall refer to the Planning Board. Time period is discretionary for Solicitor to review. Doesn't see a problem if the Council refers this to the Solicitor to review or to the Planning Board.

Councilor Leonard made a motion to simultaneously refer the request to the Solicitor and the Planning Board. Councilor Durfee questioned the motion, about the simultaneous review, if the Solicitor finds Mr. Campbell to be right it gets rejected as an incomplete application. The Planning Board and applicant would be directed about the errors in the application. Councilor Durfee seconded the motion. Councilor Costa intends to vote against the Solicitor review at this time would prefer Planning Board do it's job.

Councilor Leonard withdrew that motion. Councilor Leonard then made a motion to refer the request to the Planning Board. Seconded by Councilor Lambert motion passed unanimously.

Councilor Leonard made a separate motion to also send the request to the Solicitor for review for completeness. Councilor Durfee seconded the motion, which passed on a vote of 6-0-1, Councilor Costa abstained.

The Town Council was sitting as the Board of Licensing Commissioners:

**BOARD OF LICENSING COMMISSIONERS AND PUBLIC HEARINGS:**

**APPOINTMENTS & RESIGNATIONS**

**Town Clerk - Request Councilor Jay Lambert be appointed to Work With Town Solicitor and Town Clerk on Ordinance Revision**

Councilor Durfee made a motion, seconded by Councilor Roderick to appoint Councilor Jay Lambert to a committee to work with the Town Solicitor and the Town Clerk on Ordinance Revision. Motion passed unanimously.

**PUBLIC HEARINGS- ADVERTISED**

**Singing Out Against Hunger, Jane Bitto, 2325 Main Road – Request Noise Ordinance Variance for September 18,19 and 20, 2009 between 12:00p.m.to 9:00 p.m. – Subject to Meeting All Legal Requirements – Fundraiser “Singing Out Against Hunger”**

**Coastal Roasters, Lisa Machado, 1791 Main Road – Request noise Ordinance Variance for September 18, 2009 between 12:00p.m. to 4:00 p.m. September 19 and 20 between 9:00 a.m. to 1:00 p.m. – Subject to Meeting All Legal Requirements – Fundraiser “Singing Out Against Hunger”**

President Bollin opened the advertised Public Hearing for both Noise Ordinance Variance requests asking if anyone wished to be heard. Seeing no input, closed the Public Hearing and opened to comments from the Council. Councilor Costa noted this fundraiser has been held for several years with no major problems.

Councilor Costa made a motion to approve the Noise Ordinance Variance requests for “Singing Out Against Hunger” at Evelyn's Drive In on Sept. 18-20,2009 from 12pm to 9pm and at Coastal Roasters on Sept. 18,09 from 12pm to 4pm and on Sept. 19 & 20,09 from 9am to 1pm. Seconded by Councilor Lambert motion passed unanimously.

Chief Blakey noted there haven't been any problems in the past with these fundraisers.

**Tiverton Power, Inc. Attorney Richard A. Sherman – Proposed Amendment to the Town Zoning Map**

Solicitor Teitz wanted to put on the record he received communication from Attorney Lessard for the abutters regarding the notices. Certified notices were sent fourteen (14) days prior, actually more than 14 days, statutorily the time frame set forth. The notices were picked up on Friday May 22,2009 and stamped on the 23<sup>rd</sup>. Atty. Lessard did believe this was sent within the time period, difficult to respond in this time frame, did not have a full 14 days. Solicitor Teitz noted the Clerk mailed the notices and met the legal requirements.

President Bollin opened the Public Hearing for comments. Attorney Richard A. Sherman, for Tiverton Power, Inc., purpose of the Amendment is for a change in the Zoning Map. On land owned by the applicant the change in lines is consistent with the Comprehensive Plan (Comp. Plan) No change is sought for the Overlay District, will still allow for Open Space and R60 Zoning. The Planning Board has recommended approval, letter attached to request. CEO Michael Leighton briefly spoke; Tiverton Power provides power, economically and reliably. Excellent operating record as to safety and environment. Zero recordable incidents, no notices of environmental violation. Will install sewer lines to the facility, should prove beneficial to the Town with the development of Industrial Park.

Jason Moore, Project Manager, spoke about the new proposed additional plant and expansion project. Construction of that plant would mirror the existing plant, would have dual fuel capability, a duct burner and allow the facility to operate for a limited period of time in cold months. The height of the new condenser 102 ft. although it is not specked out yet. The addition of a new substation built by Tiverton Power, would then be handed over to National Grid. The plant would use ultra low sulphur, have a secondary containment system, groundwater flow is away from Stafford Pond. Entrances to the plant would be upgraded, no changes to right of ways.

Councilor Leonard questioned the duct burner, likened it to an after burner, and asked about the environmental impact. Christopher Rein, noted ESS, environmental consultant, emissions regulated by DEM and the United State Environmental Protection Agency (EPA). Impact will be insignificant. Councilor Durfee asked about the capacity of the fuel tank. Mr. Moore replied 880,000 gallons. Councilor Arruda questioned transport of the fuel. Tanker trucks like those that fuel gas stations would deliver fuel. Frequency dependent upon use. Predict three tanks per hour if fuel is used. The tank can go 3-3 ½ days between refills. Councilor Durfee noted roughly 300,000 gallons/day. Mr. Moore noted there is a limitation on the amount of fuel allowed to burn, 1500 hours/year only used when gas is not available.

Councilor Durfee was concerned about the duct burner, noise and the environmental impact. Also asked when they would be filing an application for an energy facility as one provision of the EFSB is to request filers of the application to provide studies. Mr. Sherman noted they would be glad to comply with any requests for studies. Mr. Moore noted the pipes delivering the fuel would be double walled, monitored to determine leakage; oil delivered would be off loaded in a containment area. Will have an emergency action plan including phone numbers and training, all contingencies will be addressed.

The proposed tank location is outside the watershed district based on topographical contour lines. Councilor Durfee asked about hydrology reports. Mr. Sherman noted there was a study in 1997, haven't done any additional borings, likely will have to be done as part of licensing process. Councilor Durfee noted the Council does not have an environmental consultant on staff so the Council would have to look at the EFSB report. Question arose about the watershed protection line. This line is the left diagonal line, watershed line runs through Parcel 69D. Mr. Sherman noted if the Zoning change is approved then public hearings will have to be held for an energy facility, special use permit and for a subdivision.

Solicitor Teitz noted this Public Hearing is just for the Zoning Change, first step in the process. Councilor Leonard asked the Solicitor about the Zoning Change in a watershed area. Couldn't answer with a yes/no, has to look at individual circumstance. Nothing that prohibits. Councilor Leonard asked if it made sense to allow a special use within this area. Councilor Durfee noted there is nothing to prevent the applicant from filing with the Siting Board. Atty. Sherman's analysis was because the change to the zoning map is a political act, outside of the EFSB, applications we are preparing premised on the fact they would be granted. Not enough room now to construct a plant. According to CEO Michael Leighton the time to construct a plant coincides with the needs of the market. The recession has had some impact so there is not an immediate need, with greenhouse gases the cost of "carbon", older plants, will have to be retired. Generally takes two years to build a plant, best estimate for a new plant, 2014-2015.

Councilor Costa was prepared to make a motion the Zoning Map change be approved subject to a review in 5 years, if you choose not to build. Mr. Leighton's opinion was they would be at a disadvantage with Canadian Hydropower. President Bollin noted the discussion on a motion was premature. The Public Hearing has to close first before the Council can take up the debate. Councilor Costa withdrew the motion. Laura Epke wanted the Fire Chief's opinion on the impact on the Fire Dept. to the proposed 880,000-gallon tank.

Fire Chief Robert Lloyd noted in his 5 years as Chief, Tiverton Power has been a good neighbor, his concern with the plan as put forward, and anything that goes wrong would involve the Fire Dept. Wants assurances as to training, equipment and a plan of action. Tiverton Fire and Police are the first responders; need a commitment from Tiverton Power. According to the Project Engineer basically 110% containment will be used. Mr. Moore noted the proposed tank would have a FFF rating-foam, firefighting, dedicated fire plan and fire water. Tiverton Power welcomes the Fire and Police Dept.'s in the commissioning process. Foresees a steel ring containment system, leakage from the primary into the secondary outer ring.

President Bollin questioned the containment after the second ring. Berm is a typical containment, what Tiverton Power is proposing for the secondary containment in on concrete, superior to a liner.

Mr. Leighton pointed out the hours of operation for the fuel oil plant is extremely limited. Councilor Durfee noted the 2 months of winter use, not exactly occasional. Councilor Lambert wanted to clarify the discussion, for purposes of maximums, doesn't expect the tanks to be burned every year. Chief Lloyd again wanted a commitment for technical training and equipment. Mr. Leighton gave a commitment to unequivocally work with the Fire and Police Depts. Question arose why an 880,000-gallon tank was needed. According to Mr. Moore this is the volume the turbine consumes. In the event of a severe curtailment of natural gas, a back up use, ultra low sulphur diesel fuel burns nearly as clean as natural gas. Have air dispersion models; show insignificant impact for air quality

Resident Ed Winiarski, Zoning has to protect the community, questioned the noise that would be generated from the larger plant. Though not an abutter on a clear night can hear the condensing towers of the existing plant. Residents of Stafford Pond are spending good money on septic systems, proposed location of the new plant, not ideal, can't believe there is no other available area in the Industrial Park.

Councilor Costa motioned to close the Public Hearing. President Bollin asked if anyone else wished to be heard. Mr. Gerald Felice, CEO of Echo Park and the representative for an abutter, Douglas Industries spoke at length. Raised objections to the proposed zoning map change and read from a prepared statement. Lorne Lawless, Somerset, MA resident and Selectman, worked in the industry, urged the Council to take a long look at the proposal. This also involves making a decision about 1500 trucks per month. All for industry, knows Towns are financially challenged, should take under consideration, looking at fuel oil in a spot market, goes up in winter, also have a fiduciary's responsibility to the citizens.

Jim Sweeney, Echo Ind. Park, background in energy for 35 years, wanted to know the heat rate on the equipment as far as usage on 12,000 gallons/hour. Without knowing more information, doesn't know how the Council can decide. Peter Corr, Planning Board Vice-Chair, the questions show we don't have enough environmental information. The Planning Board was told an 80,000 gallon tank, oil use as much as 30 days, not given enough information, Mr. Corr was the only dissenting vote. Also sat on the Water Board, they came only for natural gas. Transfer of oil inherently dangerous. The underground pipe program, as far as the water board, totally unacceptable. Want to see environmental problems answered; an 880,000-gallon tank was not brought to us.

Councilor Lambert asked the Solicitor if the Council could have a condition on the proposed amendment. Solicitor Teitz affirmed the Council could grant with limitations and conditions. Mr. Corr reiterated Stone Bridge water concerns for Lot 96 and the effect of aquifer polluters. Mr. Sweeney noted there are better alternatives to oil than natural gas, doesn't think an adequate response program, not all vetting done. Water usage could be as high as 1 million gallons/day.

President Bollin closed the Public Hearing.

Councilor Durfee noting the interesting testimony made a motion to take this request under advisement, with regards to conditions for the overlay district, what was presented and the letter from the Planning Board. Solicitor Teitz when asked to table, better under advisement and continue to a date certain, but not the next meeting, the end of the fiscal year.

Councilor Costa commented the Council is only being asked to approve the change to Zoning, and then the Planning Board and Zoning Board can address. President Bollin noted if we approve tonight we take ourselves out of the process. We need time to review, 30 trucks per day off that exit, pretty tight, some questions need to be answered.

Councilor Durfee made a motion to take this request under advisement until August 24, 2009. Councilor Arruda seconded the motion. Councilor Costa commented if we don't approve they're stuck. Councilor Durfee noted that was a risk. Councilor Roderick noted we need to step back and take a longer look at this, sometimes undoing something is worse, need to know all the ramifications. Councilor Durfee also noted the Council needs to know the impact on other businesses. Councilor Leonard needed to study more, some latitude here, cognizant of the tank, uncomfortable with Stafford Pond, which is in distress. Councilor Arruda had serious concerns; need input from the Fire and Police Chief. What type of equipment would be needed in case of a serious accident? Don't know if the Town has infrastructure to manage 30 trucks, concerned with discrepancies to Planning Board, need more answers. Motion passed on a vote of 6-1, Councilor Costa opposed.

#### **NEW BUSINESS:**

**Chris Spencer, Town Planner – Request Council Authorize Letter to RIDOT to Survey the Existing Conditions Between Souza Road and State Avenue Along Main Road to Determine Where On Street Parking is Feasible**

Chris Spencer, Town Planner, asked the Council to authorize a letter to RIDOT for a feasibility study of parking on Main Road, from Souza Road to State Ave. This is in conjunction with the Zoning Amendments, asking them to take a look and get as built measurements.

Councilor Durfee made a motion that the request to draft a letter be granted. Councilor Arruda seconded the motion. Councilor Costa amended the motion to direct Mr. Spencer to draft the letter. Motion passed unanimously.

Councilor Durfee made a motion, seconded by Councilor Arruda to move item G-4 out of order. Motion passed unanimously.

**School Committee Chair and Vice Chair, Jan Bergandy and Sally Black – Process and Schedule of Turning the Old Ranger and Nonquit Schools Back to the Town**

School Committee Chair Jan Bergandy and Sally Black, Vice-Chair came before the Council to discuss turning the Old Ranger and Nonquit Schools back to the Town. The ceramic triangle was removed from the Old Ranger, from June 23-30 the rest of the tables and chairs will be removed, on the 30<sup>th</sup> the water will be shut off. Property Insurance through the Trust estimated at \$10,000. Nonquit has 500 gallons of heating fuel in the tank, Ranger 2700 gallons at \$3.42/gallon totaling \$9,200. Promised to turn the Schools over to the Town, questioning the process. Solicitor Teitz suggested a formal letter-indicating vote of the School Committee.

**Councilor Durfee – Extension of Moratorium on Bay Street Area to December 31, 2009**

Councilor Durfee made a motion, seconded by Councilor Roderick to extend the Moratorium in the Bay Street area to December 31, 2009. Motion passed unanimously.

**Councilor Durfee – Discussion and Possible Vote Regarding Use of Master Lever for Elections**

Councilor Durfee wanted to discuss a possible vote regarding the use of the Master Lever in Elections. Did not realize how many under votes. The Master Lever disenfranchises candidates in non-partisan elections. Thought the Council should take a look, given the late hour, willing to continue.

Councilor Durfee made a motion to continue to the next meeting, seconded by Councilor Arruda. Charles M. Moran, Jr., Democratic Town Party Chair, spoke against the vote. Believed there were other ways, including signage and ballot improvement language to remedy the situation. Councilor Lambert disagreed with taking a vote. Motion passed 6-0-1, Councilor Lambert abstained.

**Town Administrator – Request Ratification of Tax Collector Contract**

Administrator Goncalo requested the Council ratify the contract of the newly appointed Tax Collector, Toni Lyn McGowan. This is the Model Contract discussed at previous Council Meetings. Councilor Costa pointed out on page 2, Section 8, the last sentence the word *Employee* should be *Employer* and on page 3 the spelling of the last word in Section 14c should be *Charter*.

Councilor Costa made a motion to ratify the Contract of the Tax Collector with the minor changes. Motion was seconded by Councilor Leonard and passed unanimously.

**BIDS & REQUESTS FOR PROPOSALS**

**Town Administrator/ DPW Director – Request Award of Bids as Recommended by DPW Director**

**a. Bituminous Concrete Paving**

**b. Road Materials**

**c. Catch Basin Blocks**

**d. Unleaded Gasoline and Dyed Off Road Diesel Fuel**

DPW Director Berlucchi requested the award of bids for the above items. Councilor Costa questioned the contract for the Unleaded Gasoline (Gas) delivery. According to the contract the bid price does not include taxes, yet was on the bid form. Solicitor Teitz in reviewing the bid specs noted the Town does not have to buy, just want them to set a price. Director Berlucchi noted 2 additional charges for fuel, 30 cents/gallon and a 17cent delivery charge based on the price for that day, real bid is a comparison of delivery charges, price will vary for each delivery.

For the Bituminous Concrete Paving, Director Berlucchi did not recommend the lowest bidder as last year there were problems, recommended P.J. Keating Co. Several Councilors questioned the estimated bid amount \$128,517, if the bid is awarded would full amount need to be paid. Dir. Berlucchi noted under the Contract the Town has the right to use any volume, have \$70,000 in that account.

President Bollin noted the bid shouldn't have a total, just a unit price. Councilor Durfee made a motion to take the per unit price for the Bituminous Concrete. Councilor Roderick had a problem with that, the concrete bid does not say price/ton if we only use so many tons. Solicitor Teitz noted it was clear in the invitation to bid estimated quantities will be used but the document for the award should have the last sentence with the estimated total amount deleted.

Councilor Leonard made a motion, seconded by Councilor Durfee to continue this to the next meeting. Motion passed unanimously.

**DPW Director – Request Waiving of Bid Bond Requirement for High Density Polyethylene Pipe and Catch Basin Frames and Grates Bids**

**a. Award of Bid as Recommended by DPW Director Berlucchi for High Density Polyethylene Pipe**

**b. Award of Bid as Recommended by DPW Director for Catch Basin Frames and Grates**

Councilor Durfee made a motion, seconded by Councilor Leonard to award the bid for High Density Pipe as recommended to E. J. Prescott Inc. and to award the bid for Catch Basin Frames and Grates to Vellano Bros., Inc. Motion passed unanimously.

Councilor Durfee made a motion, seconded by Councilor Leonard to waive the bid bond requirement for High Density Polyethylene Pipe and Catch Basin Frames and Grates. Motion passed unanimously.

**TOWN ADMINISTRATOR ANNOUNCEMENTS, COMMENTS AND QUESTIONS**

1. Last Friday an Intern started working at the Police Department, has Criminal Justice experience. At no cost to the Town will be working through the summer.
2. At the May 26, 2009 Tiverton Town Council Meeting it was announced the Tiverton Police Department will receive \$15,000 in Stimulus Money for computer upgrade. Asking that Public Comments be directed to Police Chief Thomas Blakey.

**COUNCIL ANNOUNCEMENTS, COMMENTS AND QUESTIONS:**

1. Councilor Costa announced he intends to move forward with an agenda request to change the fiscal year.
2. Councilor Costa is interested in establishing a temporary traffic committee to look into signage, speed, etc. and then bring recommendations to the Council.

**TOWN SOLICITOR, ANNOUNCEMENTS, COMMENTS AND QUESTIONS:**

Solicitor Teitz with regards to the moratorium wanted to say publicly that it does appear a settlement is at hand, RIDEM Director had released a news article, however, Town does not yet have any public documents with signatures.

**CLOSED EXECUTIVE SESSION**

**1. Town Solicitor - Litigation – 42-46-5(a) (2)**

**2. Town Solicitor – Prospective Business – 42-46-5(a)(6)**

In Open Session, Councilor Durfee made a motion, seconded by Councilor Leonard to enter into Executive Session pursuant to 42-46-5(a)(2)-Litigation. Motion passed unanimously.

Councilor Durfee made a motion to further remain in Executive Session pursuant to 42-46-5(a)(6)-Prospective Business. Motion passed unanimously.

The Council entered into Executive Session at approximately 10:45p.m.

The Council returned to Open Session at approximately 11:05p.m.

**OPEN SESSION:**

In open session Council President Bollin stated no formal action had been taken in Executive Session. Councilor Roderick motioned to seal the minutes of the Executive Session, seconded by Councilor Lambert. Motion passed unanimously.

**ADJOURNMENT:**

Councilor Roderick motioned to adjourn, seconded by Councilor Lambert. Motion passed unanimously.  
Council adjourned at approximately 11:10 pm.

A True Copy. ATTEST: \_\_\_\_\_ Nancy L. Mello, Town Clerk